IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

MFA.No. 58 of 2003()

ICA.14/1999 of EMPLOYEES INSURANCE COURT, ALAPPUZHA
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APPELLANT: OPPOSITE PARTIES
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1. THE EST CORPORATION, PANCHADEEP BHAVAN, NORTH SWARAJ ROUND, THRISSUR-20.

2. THE CHAIRMAN, ESI MEDICAL BOARD, ALLEPPEY

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENTS: APPLICANT

D.RAJU, INS.NO.54-304161, NEETHU NIVAS, (DIED) KANNITAVELY, KUTHIRAPPANTHY, ALAPPUZHA.

ADDL.2. MRS. V.R.PRABHAVATHI, AGED 42,W/O.LATE D.RAJU, VADAKKEPARAMBU, NEAR I.M.S., PUNNAPRA P.O., ALAPPUZHA.

" 3. NEETHU RAJ, AGED 18 YEARS, D/O.LATE D. RAJU, -DO-, -DO-

" 4. NIVYA RAJ, AGED 15 (MINOR), REPRESENTED BY MOTHER V.R.PRABHAVATHI, -DO- -DO-

" 5. NITHIN RAJ, AGED 13 (MINOR) REPRESENTED BY MOTHER V.R.PRABHAVATHI, -DO- -DO-

(ADDL.R2 TO R5 IMPLEADED AS PER ORER DTD. 12/7/2006 IN IA.1263/2006)

BY ADV. SRI.S.VINODKUMAR
SRI.M.C.MADHAVAN
SRI.K.P.MEHABOOB SHERIEFF

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.A.C.A.NO.58 OF 2003

&

M.F.A.NO.518 OF 2003 (A)

Dated this the 26th day of March, 2008

J U D G M E N T

KOSHY,J.

Both Insurance company and claimants challenge the award passed by the Motor Accidents Claims Tribunal, Thrissur in O.P.(MV).NO.1008/1998. Claimant therein sustained injuries in an accident on 20.4.1998. He sustained serious injuries and it was found that accident occurred due to the negligence of the driver of the vehicle insured by the 3rd respondent Insurance company (appellant in MACA No.58/2003). Against a claim of Rs.15,83,000/-, tribunal awarded only an amount of Rs.4,23,300/-. Claimants in MFA.No.518/2003 contended that quantity of compensation awarded is inadequate whereas in MACA.No.58/2003, contention of the Insurance company is that amount awarded is excessive. Only quantum of compensation is disputed in the appeal and we are considering only the same.

2. Claimant was aged 41 years at the time of accident.

Tribunal has fixed 13 as the multiplier. According to the claimant, as per the 2nd Schedule, multiplier is 15. He has a further case that in view of the reduction in interest rate and increase in the life expectancy, multiplier should be higher than that is fixed under the 2nd Schedule. In ***A.P.S.R.T.C. v. Pentaiah Charg (2007 AIR SCW 5689)*** Apex Court held that in the absence of special certificate, multiplier fixed under the 2nd Schedule should be adopted for assessment of compensation under Section 166 also. But taking the guidelines from the 2nd Schedule, we are of the view that 15 can be fixed as the multiplier instead of 13. Next contention is with regard to income. Exts.A10, A11 and A12 are the income tax assessments for the year 1998-99, 1999-00 and 2000-01. Assessment of income tax for the financial year 1997-98 is reflected in the assessment of income for assessment year 1998-99 and his income from the gold business is shown as Rs.1,03,000/-. Here his income is about Rs.8,500/- per month. In the next financial year, 1999-00 as per Ext.A11 income tax returns, it was only Rs.62,000/- as in

April itself he sustained accident and in the subsequent year, that is, for 2000-01 (Financial year 1999-00) as per Ext.A12, his income was only Rs.65,000/-. That shows that income was substantially reduced by 40% in the subsequent years. According to the claimants, in view of the reduction in money value and for the expansion of the business, if he was not injured, the income would have been doubled and his personal attention in the business has almost lost. Tribunal has fixed Rs.40,000/- as the yearly income. Considering the income tax certificate, we are of the view that atleast the tribunal ought have atleast fixed Rs.5,000/- as the monthly income (Rs.60,000/- as the yearly income). Now regarding the injuries concerned, Ext.A2 is the copy of the wound certificate. Ext.A5 is the discharge summary. Extensive lacerated wounds on the left upper arm and left forearm and compound comminuted fracture of left humerus, radius and ulna with vascular and nerve injury are noted in this document. Debridement, open reduction and internal fixation, vascular repair and reconstruction, repair of muscles and skin graft were done. The

petitioner developed a blow out from the bronchial artery in the arm on 5.5.1998. As the blow out was below the level of the profunda, the vessel was ligated. He was discharged on 18.5.1998. He was again admitted on 14.7.1998 with the ununited fracture of left humerus. Nail was removed from the left humerus. Closed interlocking nailing of humerus was done. He was discharged on 25.7.1998 with the advice to continue physiotherapy. Ext.A8 series are the photographs and their negatives showing the appearance of the left hand of the petitioner. Ext.X1 is the case record produced from the hospital. Even at the time of trial, he was continuing treatment. Ext.A7 certificate issued on 21.6.2001 by Consultant Orthopaedic Surgeon, Metropolitan Hospital, Thrissur shows that he has following surgeries:

1. Removal of implants used to internally fix his fractured left upper limb bones.
2. Transfer of tendons to improve left hand function.
3. Vascular bypass graft for left upper limb if he develops further vascular compromise.

Tribunal also found that there is serious disfigurement. Doctor certified that there is 93.4% permanent partial physical impairment and permanent disability for the whole body is 42.03%. Since doctor was not examined, it was not accepted and tribunal fixed 25% disability. Before the tribunal Insurance company contended that assessment of disability is excessive and he should be sent for examination by the Medical Board. That was not done. During the hearing of the appeal also, Insurance company contended that he should be examined by the medical Board. Therefore, he was directed to be examined by the Special Medical Board of Government Medical College Hospital, Thrissur and he was examined by the competent Medical Board of Government Medical college, Thrissur and disability certificate shows the following disabilities:

> 1. Extensive scaring of the (Lt) upper limb – whole of medial aspect of (Lt) arm, posterior aspect of (Lt) arm and anterior and medical aspect of (Lt) forearm about 35 cm x 6 cm.
>
> 2. Wasting of (Lt) arm muscles of 4 cm with loss of one grade power.
>
> 3. Wasting muscles of (Lt) forearm of 3 cm with

loss of one grade power.

4. Stiffness of (Lt) shoulder – Abduction only 120^0 further abduction is limited.

5. Internal rotation (Lt) shoulder only 45^0 – external rotation only 40^0.

6. (Lt) elbow is also stiff. Movements from 165^0 to 95^0 flexion.

7. Stiffness (Lt) wrist – palmar flexion 25^0 and Dorsiflexion 40^0.

8. Limitation of rotations of (Lt) wrist – no supination is possible. Rotary movements only up to mid prone position.

9. Stiffness of (Lt) hand.

10. Decreased hand function with weakness of grip and hook of 40%.

11. Decreased sensation in lateral $3^1/_2$ fingers with incomplete Median nerve recovery as seen in nerve conduction study.

12. Fresh X-rays showed malunited fracture (Lt) humerus with nail in situ.

13. United fracture (Lt) Radius & Ulna with Plate/Screws in situ.

14. He has no pulses-radial, ulnar and brachial in the (Lt) upper limb, indicating a vascular compromised limb.

Whole body disability was assessed at 41.1%. Split up of disability were as follows:

7% for (Lt) shoulder problems.

11% for (Lt) elbow stiffness.

5% for Rotation Ankylosis.

6% for wrist stiffness.

3% for wasting and weakness of (Lt) Arm muscles.

3% for wasting and weakness of (Lt) forearm muscles.

2% for MCP joint stiffness of all fingers.

2% for PIP joint stiffness of all 5 fingers.

5% for impaired (L) hand function – pinch, hook and grasp due to median nerve paralysis.

X-ray Lt. Arm comminuted fracture of humerus with nail in situ.

X-ray Lt. Forearm comminuted fracture of ulna and radius with plate and screws in situ.

A reading of the above shows that apart from the disfigurement his left hand has become useless and there is 41.1% whole

body disability. In these circumstances, we are of the view that compensation ought to have been awarded for atleast 40% disability. If that be so, compensation payable for disability and loss of earning power will be Rs.60,000 x 15 x $^{40}/_{100}$ = Rs.3,60,000/-. Tribunal has awarded only Rs.1,30,000/-. Therefore, additional compensation payable for disability and loss of earning power will be Rs.2,30,000/-. It is contended that the certificate shows that he required further treatment, surgeries etc. Considering the total amount awarded and interest to be earned, we are not enhancing the compensation granted under other heads. Rs.40,000/- granted towards pain and sufferings cannot be held to be excessive because he was under prolonged treatment for more than one year. Thus additional amount of Rs.2,30,000/- should be deposited by the 3rd respondent Insurance company (appellant in M.A.C.A.No.58/2003) with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal and on deposit of the above amount, appellant is allowed to withdraw the same. Hence, M.A.C.A.No.58/03

filed by the Insurance company is dismissed and MFA.518/03 is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.A.C.A.NO.58 OF 2003
&
M.F.A.NO.518 OF 2003 (A)

J U D G M E N T

26th March, 2008